

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 29, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3349

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

METROPOLITAN LIFE INSURANCE COMPANY,
A New York Corporation,

Plaintiff-Respondent,

v.

JAMES WILSON ASSOCIATES,
A Wisconsin Limited Partnership,
DARRELL R. WILD
and KEY PERSONNEL, INC.,
A Wisconsin Corporation,

Defendants-Appellants,

FIRST NATIONWIDE BANK,
A Federal Savings Bank,

Defendant-Respondent,

THE FIRST NATIONAL BANK OF PORTAGE,
A Wisconsin Banking Corporation,
BANK OF SUN PRAIRIE,
A Wisconsin Banking Corporation,
JWP INVESTORS,
A Wisconsin General Partnership,

JOHN C. KIRKPATRICK,
ASHOK KUMAR,
ALAN W. BABCOCK,
THOMAS C. LALLY,
ROBERT W. EDLUND,
FIAZ A. CHOUDRI
and BRUCE G. FELLAND,

Defendants.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Reversed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. James Wilson Associates ("JWA"), its general partner, Darrell Wild, and its former general partner, Key Personnel, Inc., appeal from a foreclosure judgment in favor of First Nationwide Bank and Metropolitan Life Insurance Company. The issue is whether the appellants waived their right to contest foreclosure and to exercise their redemption rights. We conclude that they did not, and we therefore reverse.¹

Metropolitan holds the first mortgage and First Nationwide a second mortgage on a building JWA owns. JWA filed for bankruptcy in 1990 because it was unable to make a balloon payment owed to Metropolitan. While the bankruptcy case was pending, JWA and First Nationwide renegotiated their loan contract in a stipulation calling for \$17,675.84 monthly payments, on the following terms (in relevant part):

9.The monthly payments due First Nationwide ... are due and payable on the first day of each month.

¹ This is an expedited appeal under RULE 809.17, STATS.

- 10.If any of the payments ... are not received by First Nationwide by the tenth (10th) of the month ... the Debtor shall be deemed to be in material default as specified in this Stipulation.
- 11.If any of the payments (either pursuant to this Stipulation or pursuant to the Plan of Reorganization) are not received by First Nationwide as required under this Stipulation, First Nationwide may give written notice by facsimile ... of the default to counsel for Debtor and to Debtor. The Debtor shall have two business days ... to effect a cure of the notice of default.
- 12.If the Debtor is in default under this Stipulation, and has failed to cure as provided above, First Nationwide shall be entitled to immediate lift of [bankruptcy] stay without further notice to Debtor....
- 13.The Debtor also agrees that if First Nationwide is entitled to immediate lift of stay, it may file an affidavit with the Dane County Circuit Court stating that Debtor is in default and that Debtor and Darrell R. Wild have agreed to the entry of the attached Judgment of Foreclosure without further notice or hearing which are expressly waived by Debtor and Darrell R. Wild.... Both Debtor and Darrell R. Wild agree that they are waiving their redemption rights ... and are agreeing to the entry of the attached Judgment without further notice or hearing.
- 14.Debtor and Darrell R. Wild, reaffirm and agree to be bound by the terms of the note, mortgage assignment of rents and any other loan documents, except to the extent that they are specifically modified by this agreement.

JWA subsequently became delinquent on the real estate taxes for the building, and also placed a junior mortgage on the property. Both occurrences violated its contract with Metropolitan. Metropolitan commenced this action on the basis of those alleged defaults.

As a result, First Nationwide also declared its loan to be in default and demanded full payment of its loan. When JWA failed to pay the entire amount due, approximately \$1.9 million, First Nationwide cross-claimed, alleging a default based on failure to pay real estate taxes, granting a junior mortgage without permission, and defaulting under the Metropolitan mortgage. Until First Nationwide declared the loan in default, JWA made all of the required monthly payments.

First Nationwide then filed a motion for an immediate judgment of foreclosure without redemption rights, based on the bankruptcy court stipulation. The trial court granted the motion, and this appeal resulted.

Construing an unambiguous contract is a question of law. *Patti v. Western Machine Co.*, 72 Wis.2d 348, 353, 241 N.W.2d 158, 161 (1976). Whether a contract is ambiguous is also a question of law, which we decide independently of the trial court's decision. See *Moran v. Schern*, 60 Wis.2d 39, 46-47, 208 N.W.2d 348, 351-52 (1973). A contract is ambiguous only if it is reasonably susceptible to more than one meaning. *Central Auto Co. v. Reichert*, 87 Wis.2d 9, 19, 273 N.W.2d 360, 364-65 (Ct. App. 1978).

The stipulation between JWA and First Nationwide did not grant First Nationwide the right to an accelerated foreclosure, without redemption rights, on the defaults alleged here. First Nationwide contends that JWA's default in making any payment, including the \$1.9 million payment due after acceleration of the loan, entitled First Nationwide to its remedies under the stipulation. We disagree. The stipulation plainly concerns only the renegotiated *monthly* payments due under the contract and the reorganization plan, which JWA always made. It did not modify JWA's defenses and rights on any other defaults, such as those alleged here. No other interpretation of the stipulation is reasonably available.

By the Court. – Judgment reversed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.